

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

FEB 25 2008

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

R. L. ANTHONY ST. CLAIR,

Appellant.

2 CA-CR 2006-0223

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20050637

Honorable Frank Dawley, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Rose Weston

Tucson
Attorneys for Appellant

V Á S Q U E Z, Judge.

¶1 A jury found appellant R. L. Anthony St. Clair guilty of manslaughter, aggravated driving with a drug or its metabolite in his body, criminal damage in the amount of \$10,000 or more, and two counts of endangerment. All of the charges arose from a fatal car accident on February 2, 2005. On appeal, St. Clair argues the trial court erred in admitting evidence of his statements and conduct at a convenience store immediately before the accident, including his alleged theft of beer. For the reasons discussed below, we affirm.

Facts and Procedural Background

¶2 We view the evidence presented in the light most favorable to sustaining the convictions. *State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408, *supp. op.*, 206 Ariz. 153, 76 P.3d 424 (2003). Just after 2:30 a.m. on February 2, 2005, St. Clair was driving north on Swan Road in midtown Tucson at over twice the speed limit. He ran a red light at Swan and Pima Street and collided with another car in the intersection. The other driver was ejected from his vehicle and died at the scene. St. Clair's car rebounded into two other vehicles that were stopped at the light, also damaging them.

¶3 Shortly before the accident, St. Clair had stopped at a convenience store to purchase gasoline. While there, he "joked" with a delivery truck driver, Jesus Marrufo, and the driver's crew who were delivering beer to the store. When a taxicab pulled up near his car, St. Clair became upset and made derogatory comments about the taxicab driver. St. Clair then took one of the cases of beer the crew had unloaded from the delivery truck and became aggressive, telling them that he had a weapon in his car and threatening to come

back and get them if they called the police. As he was leaving, St. Clair threw the gas pump handle to the ground, got into his car, and sped off. A few minutes later, the driver of the delivery truck asked the convenience store clerk to call 911 to report the beer theft. The 911 call was made at 2:43 a.m., around the same time the accident occurred.

¶4 Following the accident, St. Clair was taken by ambulance to the hospital where he admitted to police he had been drinking. One of the officers performed a horizontal gaze nystagmus test on St. Clair and observed all six cues of impairment. A chemical analysis of St. Clair's blood taken within two hours of the accident showed a blood alcohol concentration (BAC) of .03, as well as the presence of marijuana and the drug phencyclidine (PCP).

¶5 St. Clair was indicted for first-degree murder, second-degree murder, robbery, aggravated driving under the influence (DUI) with a suspended or revoked driver's license, aggravated driving with an illegal drug or its metabolite in his body while his license was suspended or revoked, criminal damage, and two counts of endangerment. Before trial, the court dismissed the first-degree murder and robbery charges at the state's request.

¶6 The jury found St. Clair guilty of aggravated driving with a drug in his body, criminal damage, and both counts of endangerment. It acquitted him of second-degree murder, found him guilty of the lesser-included offense of manslaughter, and was unable to reach a verdict on the DUI charge. After finding St. Clair had one historical prior felony conviction, the court sentenced him to a slightly mitigated prison term of 9.5 years for

manslaughter and to concurrent, slightly mitigated, enhanced prison terms of four years each for criminal damage and aggravated driving with a drug in his body. The court imposed presumptive, enhanced, 1.75-year prison terms for each of the two endangerment counts, to be served consecutively to the other sentences and each other.

Discussion

¶7 In the single issue raised on appeal, St. Clair argues the trial court abused its discretion in admitting evidence of his conduct and statements at the convenience store before the accident. He contends the convenience-store evidence constituted prior-bad-act evidence and should have been excluded because it was irrelevant, had no proper purpose, and was prejudicial.¹ We review a trial court’s admission of prior-act evidence for an abuse of discretion and will uphold the admission of such evidence unless there is clear error. *State v. Salazar*, 181 Ariz. 87, 91, 887 P.2d 617, 621 (App. 1994).

¶8 After the jury had been selected at the start of trial, St. Clair moved to preclude Marrufo from testifying that St. Clair had made threatening statements at the convenience store, had used a “gangster style” manner of speaking, and had appeared to be under the influence of drugs or alcohol. The trial court excluded the “gangster style”

¹It is not clear whether the trial court also admitted this evidence on the ground that it was “intrinsic to the charged crimes” because the accident had arguably occurred in the course of St. Clair’s flight from the theft at the convenience store. *See State v. Nordstrom*, 200 Ariz. 229, ¶ 56, 25 P.3d 717, 736 (2001). However, because the state, both at trial and on appeal, has argued its admissibility only as a prior act pursuant to Rule 404(b), Ariz. R. Evid., we do not consider whether it could also have been admitted on other grounds.

references but admitted Marrufo's opinion that St. Clair "looked like he was on something, or under the influence of something," finding that was a "reasonable lay opinion, if the foundation exists for it."² When the state indicated it intended to introduce evidence of St. Clair's threatening statements, but not in the context of the beer theft, the court expressed concerns about the statements' being introduced "in a vacuum":

[I]f we take away the theft, we've got these statements hanging out, and there's a danger that they'll be misconstrued . . . [a]nd . . . lead . . . the jury to believe that [St. Clair] really must have been way out there if he's making comments about, the cops can't do anything to him, he'll get a gun if the cops are called, without the jury knowing what the context was that he's telling the guy whose beer he's stealing . . . that they were basically related to the theft.

Finding that the statements taken out of context could lead the jury to make an "unfair inference," the court, over St. Clair's objection, allowed testimony about both the statements and the theft of the beer.³ At trial, Marrufo testified about the statements and the theft and gave his opinion that, based on St. Clair's "erratic change in behavior," he might have been under the influence of drugs or alcohol.

²*See Esquivel v. Nancarrow*, 104 Ariz. 209, 213, 450 P.2d 399, 403 (1969) ("well-settled" that lay opinion of intoxication is admissible); *Starkins v. Bateman*, 150 Ariz. 537, 546, 724 P.2d 1206, 1215 (App. 1986) (approving lay opinion of emotional and mental state).

³St. Clair argues that, because his statements should not have been admitted, the alleged theft should not have been admitted to provide context for the statements. However, because the statements were properly admissible, the court acted within its discretion in admitting evidence of the theft. *Cf. State v. Prasertphong*, 210 Ariz. 496, ¶ 23, 114 P.3d 828, 833 (2005) (trial court has discretion to admit remainder of statement if redacted portion may mislead jury).

¶9 Admission of prior-act evidence is governed by four “protective provisions” of the rules of evidence: “(1) the evidence must be admitted for a proper purpose under Rule 404(b)[, Ariz. R. Evid.]; (2) the evidence must be relevant under Rule 402[, Ariz. R. Evid.]; (3) the trial court may exclude evidence if its probative value is substantially outweighed by the potential for unfair prejudice under Rule 403[, Ariz. R. Evid.]; and (4) the court must give an appropriate limiting instruction if requested under Rule 105[, Ariz. R. Evid.]” *State v. Lee*, 189 Ariz. 590, 599, 944 P.2d 1204, 1213 (1997).

¶10 First, pursuant to Rule 404(b), evidence of other acts is not admissible to prove a person’s character “to show action in conformity therewith” on a particular occasion. But such evidence is admissible for “other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* Here, the trial court concluded that the convenience-store evidence “help[ed] establish [St. Clair’s] motive” for driving at high speed and ignoring traffic signals and was indicative of his “state of mind.” *See State v. Wood*, 180 Ariz. 53, 61-62, 881 P.2d 1158, 1166-67 (1994) (list of permissible uses in Rule 404(b) “illustrative, not exclusive”). We agree. St. Clair’s conduct at the convenience store helped to explain his subsequent behavior. Contrary to his assertion that the evidence merely served to impugn his character, the evidence “shed some light on the crime charged and not merely on [his] criminal propensity.” *State v. Rose*, 121 Ariz. 131, 136, 589 P.2d 5, 10 (1978).

¶11 Second, prior-act evidence must be relevant. *Ariz. R. Evid.* 402; *Lee*, 189 Ariz. at 599, 944 P.2d at 1213. Evidence is relevant when it has a tendency to make the existence of any fact in dispute more or less probable. *Lee*, 189 Ariz. at 599, 944 P.2d at 1213; *Ariz. R. Evid.* 401. In this case, the state asserted it was offering the evidence to “show[] the effects . . . of the PCP that [St. Clair] was under, which [was] an important part of the State’s case.” Notwithstanding St. Clair’s argument that “[n]othing that occurred at the store made it more likely that [he] was guilty of committing the later crimes for which he was being tried,” his behavior minutes before the accident was clearly relevant to the issue of whether he was impaired by drugs or alcohol. Section 28-1381(A)(1), A.R.S., makes it illegal to drive a vehicle while under the influence of alcohol or drugs “if the person is impaired to the slightest degree.” At .03, St. Clair’s BAC within two hours of the accident was less than the .08 required for a presumption of impairment under § 28-1381(A)(2). *See Raye v. Jones*, 206 Ariz. 189, ¶ 17, 76 P.3d 863 (App. 2003). Thus, the evidence of his impairment that Marrufo’s testimony provided was relevant to the DUI charge. *See Readenour v. Marion Power Shovel*, 149 Ariz. 442, 449, 719 P.2d 1058, 1065 (1986) (“[A] trial court does not err by admitting evidence which is proper for one purpose even though the party offering it specifies a[different] purpose.”).

¶12 St. Clair also challenges the relevance of the prior acts on the grounds that they were “utterly dissimilar” from the charged offenses and too removed in time; he contends they took place up to an hour before the accident, rather than the few minutes

alleged by the state. However, even assuming St. Clair were correct, “[a]n assertion that a prior act is too different or too remote in time from the charged offense goes ‘to the weight of the evidence, not whether the evidence is relevant and admissible.’” *State v. Fernane*, 185 Ariz. 222, 225, 914 P.2d 1314, 1317 (App. 1995), *quoting State v. Hinchey*, 165 Ariz. 432, 435-36, 799 P.2d 352, 355-56 (1990).

¶13 Third, evidence of prior acts may not be introduced under Rule 403 if its probative value is substantially outweighed by the danger of an unfair prejudicial effect. *Lee*, 189 Ariz. at 599, 944 P.2d at 1213. Although the trial court here recognized “some prejudice” from its admission of the convenience-store evidence, it nevertheless concluded “the probative value exceeds, substantially outweighs the prejudicial effect.” As previously noted, St. Clair’s impairment was an element of the DUI charge, and the level of alcohol detected in his blood was not sufficient to trigger the statutory presumption that he was impaired. Therefore, the evidence of his erratic behavior at the convenience store was both probative of his impairment and critical to the state’s case on this charge.⁴ Conversely, the likelihood of unfair prejudice was relatively low. St. Clair’s acts at the convenience store “occurred shortly before the crimes charged and [were] not of such a violent or depraved nature as to outweigh [their] relevance with prejudice.” *Rose*, 121 Ariz. at 136, 589 P.2d at 10; *cf. State v. Johnson*, 116 Ariz. 399, 400, 569 P.2d 829, 830 (1977) (where

⁴In fact, even with this evidence, the state was unable to secure a conviction on the DUI charge.

defendant's assault of prostitute unrelated to charged crime of receiving earnings of prostitute, evidence of assault more prejudicial than probative).

¶14 Finally, St. Clair does not dispute that the trial court gave an appropriate limiting instruction pursuant to Rule 105, telling the jury the evidence was admitted for the limited purpose of showing St. Clair's "intent or motive or state of mind" and should not be considered "as evidence of his character or evidence that he tends to commit offenses." *See Lee*, 189 Ariz. at 600, 944 P.2d at 1214. Because the evidence of St. Clair's statements and conduct at the convenience store was relevant and offered for a proper purpose and because its probative value was not substantially outweighed by its potentially unfair prejudicial effect, we conclude the court did not abuse its discretion in admitting it, particularly in light of the limiting instruction the jury received.

Disposition

¶15 For the reasons stated above, we affirm.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge